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January 28, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, DC 20554

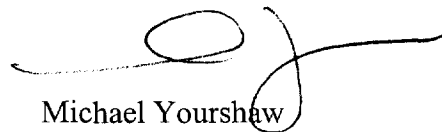
Re: CPNI: CC Docket No. 96-115

Dear Mr. Caton:

Enclosed is a letter to William A. Kehoe III in the above docket. We are submitting two copies of this notice, in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me if you have any questions.

Very truly yours,



Michael Yourshaw

cc (w/o encl.): William A. Kehoe III, Gayle Radley Teicher, Dorothy Attwood

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041

January 28, 1997

William A. Kehoe III
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RECEIVED

JAN 28 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CPNI: CC Docket No. 96-115

Dear Mr. Kehoe:

This letter, as requested, forwards copies of documents in *AT&T Communications of California v. Pacific Bell*, No. C 1691 SBA (N.D. Cal.). (Attachment A)

This case is still pending. The court has entered a preliminary injunction, which is not a decision on the merits. That order has been appealed. Thus, this case currently contains nothing of decisional significance to the Commission in Docket 96-115.

We direct your attention to an October 5, 1996, order of the Western District of Texas which refused to enter a preliminary injunction based on analysis opposite to that of the California case. (Attachment B)

If you have any questions or would like something further, please let me know.

Very truly yours,



Gina Harrison

cc: Gayle Radley Teicher, Dorothy Attwood

ATTACHMENT A

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6 PACIFIC BELL EXTRAS, and
PACIFIC BELL COMMUNICATIONS
7
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 AT&T COMMUNICATIONS OF)
CALIFORNIA, INC., a California)
13 corporation, and MCI)
TELECOMMUNICATIONS)
14 CORPORATION, a Delaware)
corporation,)

15 Plaintiffs,)
16 vs.)

17)
PACIFIC BELL, a California)
18 corporation; PACIFIC TELESIS)
GROUP, a Nevada corporation;)
19 PACIFIC BELL EXTRAS, a)
California corporation; and)
20 PACIFIC BELL COMMUNICATIONS,)
a California corporation,)

21 Defendants.)
22)
23
24
25
26
27
28

CASE NO. C 96-1691 SBA

DEFENDANTS PACIFIC BELL, PACIFIC
TELESIS GROUP, PACIFIC BELL
EXTRAS AND PACIFIC BELL COMMUNI-
CATIONS' MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
AT&T'S AND MCI'S APPLICATION FOR
A TEMPORARY RESTRAINING ORDER

DATE: TO BE DETERMINED
TIME: TO BE DETERMINED
PLACE: JUDGE ARMSTRONG'S
COURTROOM

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1
2
3
4 I. INTRODUCTION

5 The plaintiffs, in papers filed May 7, 1996, seek a
6 Temporary Restraining Order ("TRO") against defendants Pacific
7 Bell, Pacific Telesis Group, Pacific Bell Extras and Pacific Bell
8 Communications (collectively hereinafter referred to as "Pacific"
9 unless a specific defendant's name is used). This is Pacific's
10 defendants' brief in opposition to the TRO application.

11 The plaintiffs are seeking to restrain Pacific from
12 using certain telephone customer billing information.

13 Among other reasons, a TRO may not reasonably issue
14 because:

15 (a) Pacific Bell has statutory authorization and it
16 has telephone customer authorization -- in writing -- to use
17 the only information which reasonably could be in issue;

18 (b) the plaintiffs completely ignore discussion of
19 dispositive statutory language which authorizes Pacific's
20 activity;

21 (c) the telephone customer billing information at
22 issue is not proprietary to the plaintiffs;

23 (d) the plaintiffs' declarations largely speculate as
24 to what the true facts are which render the declarations
25 useless, especially for obtaining the drastic relief of a
26 TRO; and -- among other points made below;

27 (e) the plaintiffs are very far from having satisfied
28 legal standards for issuance of a TRO.

1 II. FACTS RELEVANT TO THE TEMPORARY RESTRAINING
2 ORDER APPLICATION¹

3 Pacific Bell provides local telephone exchange service
4 and multiple other telephony services within parts of California.
5 The plaintiffs provide long distance telephone service as well as
6 other telephony services within California and elsewhere,
7 including to Pacific Bell's local exchange customers. Pacific
8 Telesis Group is Pacific Bell's holding company. Defendants
9 Pacific Bell Extras and Pacific Bell Communications are wholly-
10 owned corporate subsidiaries of the holding company.

11 Recently, Pacific Bell Extras introduced a customer
12 awards program. Subject to certain exceptions and refinements,
13 Pacific Bell Extra's awards program is analogous to airline
14 frequent flyer awards programs. Essentially, pursuant to Pacific
15 Bell Extra's awards program, if a customer's current charges on
16 the Pacific Bell monthly bill exceed \$50.00, Pacific Bell Extras
17 proposes to award the customer 10 bonus points for each dollar
18 above the \$50.00 base.

19 Pacific Bell's bills include a "bottom line" lump sum
20 total for current charges derived from several smaller amounts
21 charged for a variety of telephony services. The underlying mix
22 of services varies from customer to customer. At a minimum, the
23 lump sum contains a charge for Pacific Bell's rendering of local
24 telephone service. Long distance billing charges and discrete
25 charges for such features as conference calling, voicemail and
26 call-waiting, when used by a particular customer, are

27 _____
28 ¹ The Declarations Lynne Elizondo and Jan Hewitt filed
herewith in support of Pacific's Opposition.

1 incorporated within the aggregated lump sum dollar figure
2 appearing on bills.

3 Pacific Bell is not now a long distance provider.
4 However, pursuant to contracts between Pacific Bell and the
5 plaintiff long distance carriers, the plaintiffs' long distance
6 charges and other telephony services to Pacific Bell's customers
7 are included on Pacific Bell's bills. Also, pursuant to the
8 contracts, Pacific Bell buys the accounts receivable from the
9 plaintiff carriers for the long distance and other telephony
10 charges. Thus, before a customer bill is sent out, the long
11 distance and other telephony charges thereon are debts owed to
12 Pacific Bell and only to Pacific Bell.

13 A direct relationship exists between the described lump
14 sums owed by Pacific Bell's customers and the fledgling bonus
15 points awards program: Pacific Bell proposes to disclose the
16 lump sum information -- not the underlying, discrete sub-amounts,
17 within the defendant pool. Plaintiffs object to that pending
18 transfer of the lump sum figures. They object to many other
19 things as well -- none of which, as shown below, are justified.

20

21 III. ARGUMENT

22 A. The Legal Standard for Temporary Restraining Orders.

23 The plaintiffs' Memoranda of Points and Authorities are
24 in the nature of trial briefs, not Temporary Restraining Order
25 justification papers. The plaintiffs dedicate most of their
26 legal discussion to arguing the ultimate merits, that is, how
27 Pacific has allegedly violated federal law and abused its
28 contractual relationship with the plaintiffs. Only a few pages

1 purport to show why emergency relief is warranted. In so doing,
2 the plaintiffs ignore the standards enunciated in this Circuit
3 and District for the granting of a TRO.

4 - A TRO is proper in this matter only if the plaintiffs
5 can show that

6 -- the "balance of hardships" tips sharply in their favor
7 (i.e., the risk of irreparable injury to plaintiffs if
8 the TRO is denied sharply exceeds the foreseeable
9 hardship to Pacific if the TRO is granted); and

10 -- a probability of success on the merits at a subsequent
11 trial.

12 Gilder v. PGA Tour, Inc., 936 F.2d 417, 422 (9th Cir. 1991). The
13 "balance of hardships" evaluation should precede the "likelihood
14 of success" analysis because until the balance of harm has been
15 determined the court cannot know how strong and substantial must
16 be the plaintiff's showing of likely success on the merits."

17 Direx Israel, Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 813-
18 814 (4th Cir. 1991).

19 1. "Balance of hardships" and "irreparable injury"
20 considerations.

21 The plaintiffs must first demonstrate that they will be
22 exposed to "some significant risk of irreparable injury" if their
23 request is denied. Associated Gen. Contractors, Inc. v.
24 Coalition for Economic Equity, 950 F.2d 1401, 1410 (9th Cir.
25 1991). Further, the threatened harm must be immediate.
26 Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th
27 Cir. 1988). Establishing a risk of irreparable harm in the
28 indefinite future is not enough. The harm must be shown to be

1 imminent. Church v. City of Huntsville, 30 F.3d 1332, 1337 (11th
2 Cir. 1994). Thus, if a trial on the merits is possible before
3 the threatened harm will occur, or if the potential harm can be
4 redressed by a legal or equitable remedy following trial, then a
5 TRO should not issue. Campbell Soup Co. v. ConAgra, Inc., 977
6 F.2d 86, 91 (3d Cir. 1992); Schwarzer, Tashima & Wagstaffe, CAL.
7 PRAC. GUIDE: FED. CIV. PRO. BEFORE TRIAL (The Rutter Group
8 1996), §13:55.3, p. 13-16.

9 There also must be evidence of actual injury to support
10 claims of "irreparable" injury. Speculative losses are insuffi-
11 cient. Big Country Foods, Inc. v. Board of Education, 868 F.2d
12 1085 (9th Cir. 1989).

13 Finally, before a TRO may issue, the court must
14 identify the harm which a TRO might cause Pacific and weigh it
15 against the plaintiffs' threatened injury. Los Angeles Memorial
16 Coliseum Comm'n. v. NFL, 634 F.2d 1197, 1203 (9th Cir. 1980). If
17 Pacific's likely harm is greater than any injury threatened by
18 Pacific's conduct, the TRO should be denied, absent the
19 "clearest" showing of probable success on the merits. Coffee
20 Dan's, Inc. v. Coffee Don's Charcoal Broiler, 305 F.Supp. 1210,
21 1216 (N.D. Cal. 1969).

22 2. "Success on the Merits"

23 Even assuming the plaintiffs establish irreparable
24 injury, they must still then show a likelihood of success on the
25 merits. Haitian Refugee Center, Inc. v. Christopher, 43 F.3d
26 1431, 1432 (11th Cir. 1995). The plaintiffs must demonstrate a
27 likelihood of prevailing on any affirmative defense as well as on
28 the plaintiffs' case in chief. Original Appalachian Artworks v.

1 Topps Chewing Gum, 642 F.Supp. 1031, 1034 (N.D. Ga. 1986).

2 B. Pacific Obviously Will Suffer Severe Hardships If a TRO
3 Issues. Plaintiffs Will Suffer No Hardships Because Their
4 Hardship Arguments Are Based on Misconceptions.

5 Pacific will so obviously be severely damaged if a TRO
6 issues and the awards program comes to a sudden halt. The
7 program took many expensive months to plan, organize and launch.
8 The program is several weeks underway. It involves multiple
9 contracts with outside vendors for such services as print and
10 broadcast advertising, mailings, customer call-ins, employees
11 whose workdays are dedicated to the program, promises to
12 customers as to awards availability -- bonus points are already
13 being earned by customers who have signed up -- computer system
14 cycling procedures and related timing issues, among other things.
15 Insofar as Pacific Bell's customers are also the long distance
16 carriers' customers, the awards program does not change the
17 respective relationships. Customers will not have any less
18 reason to make long distance calls on the plaintiffs' facilities,
19 just because Pacific Bell may, proverbially speaking, give them a
20 free toaster for using the telephone.

21 By contrast, the plaintiffs will not suffer any
22 hardship if a TRO is denied because Pacific is not doing any of
23 the wrongful things of which it is accused. Pacific's
24 declarations -- in contrast to the plaintiffs' speculations (see
25 pages 11 - 13, below) -- make that very clear.

26 C. The Plaintiffs Are Highly Unlikely to Prevail on the Merits.

27 Pacific has statutory authorization and the right under
28 the billing contracts for what it is doing or plans to do, as
hereafter explained. Thus, for TRO adjudication purposes, there

1 is no reasonable basis for inferring the plaintiffs have a strong
2 or other likelihood of prevailing on the merits.

3 1. Plaintiffs' Briefs Totally Ignore Clearly
4 Applicable Statutory Provisions which Permit
5 the Defendants to Proceed.

6 First, the plaintiffs correctly -- albeit with telling
7 selectivity -- quote Section 222(a) of the 1996 Telecommunica-
8 tions Act [47 U.S.C. §222(a)] to the effect that telecommunica-
9 tions carriers have "a duty to protect the confidentiality of
10 proprietary information of, and relating to, other telecommunica-
11 tions carriers." No one disputes that general proposition.
12 However, the key question in dispute is whose proprietary infor-
13 mation is here involved: the customers', Pacific Bell's or the
14 plaintiffs' information?

15 Indeed, the plaintiffs' quotation truncates the sen-
16 tence which comprises Section 222(a), leaving out words which
17 show a statutory concern with the privacy rights of customers --
18 not just the self-interest of carriers. Specifically, the full
19 Section 222(a) provides that:

20 SEC.222. PRIVACY OF CUSTOMER INFORMATION.

21 (A) IN GENERAL. -- Every telecommunica-
22 tions carrier has a duty to protect the con-
23 fidentiality of proprietary information of,
24 and relating to, other telecommunications
25 carriers, equipment manufacturers, and cus-
26 tomers, including telecommunication carriers
27 reselling telecommunication services provided
28 by a telecommunications carrier. (Emphasis
added)

29 The plaintiffs' gamesmanship as to the text of Section 222(a) --
30 as though it were somehow enacted just for them -- is symptomatic
31 of their plenary failure to discuss other dispositive sub-
32 sections of Section 222 -- specifically, Sections 222(c) and

1 222(f), hereafter discussed.

2 2. Sections 222(c) and 222(f) of the 1996 Telecom-
3 munications Act [47 U.S.C. §222] Expressly Authorize
4 that "with the approval of the customer ..."
Telephone Carriers May Use Information Contained
in Such Customer Telephone Bills for Purposes
which Encompass Pacific Bell's Use.

5 As stated, the information which Pacific Bell Extras
6 intends to use in its awards program appears in Pacific Bell's
7 bills, that is, the lump sum total dollar figure owed to Pacific
8 Bell by the customer for a given billing period.

9 Telecommunications Act Section 222(f)(1)(B) provides that
10 information contained in customers' bills belongs to the
11 customers. That subsection, entitled "Customer Proprietary
12 Network Information" (emphasis added) states, in material part:

13 [§ 222] (f) DEFINITIONS. - As used in this
14 section:

15 (1) CUSTOMER PROPRIETARY NETWORK INFOR-
MATION. The term 'customer proprietary
network information' means

16 * * *

17 (B) information contained in the
bills pertaining to telephone ex-
18 change service or telephone toll
service received by a customer of a
carrier;

19 * * *

20 (Emphasis added)

21 Thus, if -- as stated under oath by Pacific's
22 declarants -- Pacific Bell is using only the lump sum dollar
23 amounts which appear in customer bills, then no violation of the
24 Telecommunications Act is occurring. By dint of Section 222(f),
25 such information clearly belongs to the customers, not to AT&T,
26 MCI or Sprint.

27 Pacific Bell has obtained and is obtaining the written,
28 signed approvals of interested customers to use their lump sum

1 billing information for purposes of determining such customers'
2 awards through the awards program. Section 222(c) of the 1996
3 Act makes it plain that the customer -- indeed, only the customer
4 -- is empowered to give such approval for "Customer Proprietary
5 Network Information". That subsection provides:

6 (c) CONFIDENTIALITY OF CUSTOMER PROPRIETARY
7 NETWORK INFORMATION. -

8 (1) PRIVACY REQUIREMENTS FOR TELECOM-
9 MUNICATIONS CARRIERS. - Except as
10 required by law or with the approval of
11 the customer, a telecommunications
12 carrier that receives or obtains
13 customer proprietary network information
14 by virtue of its provision of a
15 telecommunications service shall only
16 use, disclose, or permit access to
17 individually identifiable customer
18 proprietary network information in its
19 provision of (A) the telecommunications
20 service from which such information is
21 derived, or (B) services necessary to,
22 or used in, the provision of such
23 telecommunications service, including
24 the publishing of directories.
25 (Emphasis added)

26
27 Perusal of the title and text of Section 222(c) compels
28 the conclusion that the "Customer Proprietary Network
Information" category raises customer privacy rights and concerns
-- not those of carriers -- and that the customer alone is
empowered to approve a carrier's disclosure of the category of
information in issue. Pacific Bell has that approval from the
customers who signed up for Pacific Bell Extra's awards program.
Thus, at a minimum, the lump sum information can lawfully be used
as freely as is consistent with the customers' signed approvals.²

29 ² The issue before the Court is adjudication of a TRO about
30 the awards program. We mention that because the plaintiffs'
31 attempt to make much of the relative broadness of the customer
(continued...)

1 In view of the plain statutory language -- totally
2 ignored in At&T's, MCI's and Sprint's 43 pages of briefing -- the
3 plaintiffs cannot justifiably assert that they own the lump sum
4 billing information which reflects what is owed by the customer
5 to Pacific Bell.

6 D. The Plaintiffs' Assertions are Factually Incongruous.

7 Further, the plaintiffs' assertions that they somehow
8 own customer billing information would be frivolous even if
9 Sections 222(c) and 222(f) did not exist. The lump sums owed by
10 the customers are Pacific Bell accounts receivable. Before the
11 customers are billed, Pacific Bell buys the accounts receivable
12 from the long distance carriers pursuant to the contractual
13 billing agreements. At the time of billing, Pacific Bell, and
14 not the long distance carriers, owns the debt evidenced by the
15 lump sum. Thus, it is quite a stretch for the plaintiffs to
16 assert that they have legal control over disclosures of the lump
17 sum information.

18 In addition, the plaintiff long distance carriers have
19 no knowledge as to what the lump sum figure in Pacific Bell's
20 bills may be. By definition, Pacific Bell itself compiles the
21 lump sum amount in that such billing is the cumulative debt owed
22 by the customer for multiple telephone services -- local calls,
23 long distance calls, call-waiting, service contracts, etc. There
24

25 ²(...continued)
26 approvals obtained by Pacific Bell. But the scope of the
27 customer approvals may be safely adjudicated, if ever, on another
28 day in another case or deferred for further discussion when the
merits of this case are addressed. The abstract issue of
broadness clearly has no place in this TRO proceeding, especially
since the use of the lump sum information is the only information
at issue in any practical imminent sense.

1 is no way that the plaintiffs could compile the lump sum dollar
2 amounts because they do not have the "itemization" of those
3 services. Only Pacific and the individual customers ever see the
4 information. Again, there is a formidable incongruity for the
5 plaintiffs to claim to have proprietary control over lump sum
6 information which they did not compile, which they could not
7 compile, which they never see, and as to which they have no
8 understanding of the amount involved.

9 In fact, it is not possible for anyone to determine the
10 itemization of the lump sum. Therefore, disclosure of the lump
11 sum does not invade the plaintiffs' proprietary information.

12 1. The Plaintiffs' Declarations and Factual Allega-
13 tions are Largely Speculations, Suggestions and
14 Guesses About the Facts. Thus, the Declarations
are Unfit for TRO Issuance Purposes.

15 The plaintiffs argue that the awards program is a means
16 by which Pacific Bell intends to send all of the carriers'
17 billing information to Pacific Bell Extras and other Pacific Bell
18 related companies, including those competing directly with the
19 plaintiffs.

20 As the accompanying declarations show, the plaintiffs
21 are absolutely wrong about what Pacific is doing with the
22 customer billing information. Simply put, except for the
23 discussed lump sums, Pacific Bell is not disclosing any other
24 customer information to anyone. Pacific does intend to provide
25 the lump sum figures to Pacific Bell-related entities, but such
26 information is not proprietary to the plaintiffs, and therefore
27 disclosure is not violative of either the Telecommunications Act
28 or the Billing Agreements with the plaintiffs.

1 The plaintiffs arrive at their erroneous conclusions
2 because they engage in speculation and conjecture. Repetitive
3 examples of such speculation include:

4 -- "It appears that Pacific plans to appropriate much more
5 of AT&T's proprietary information than just total monthly
6 charges. . . . Pacific could learn valuable information about
7 AT&T's pricing, marketing, and business strategies." Bisazza
8 Decl., at 5:20-6:2; Arnett Decl., at 13:1-12.

9 -- "[I]t is likely Pacific Bell has already disclosed
10 and/or used proprietary information in violation of the
11 agreement." Bisazza Decl., at 6:11-12; Arnett Decl., at 13:26-
12 14:2.

13 Similarly, the plaintiffs claim that Pacific's
14 advertisements "imply" that the plaintiffs endorse the awards
15 program. However, the plaintiffs fail to cite any language from
16 the awards advertising materials that mentions any of the
17 plaintiffs. The only remote connection made in the materials is
18 that long distance charges are included. This system is
19 analogous to a credit card company that awards points on total
20 charges. In that situation, no reasonable implication can be
21 made that the specific merchants endorse such a program.
22 Likewise, to strain to find such an implication here is not
23 reasonable.

24 In sum, a careful review of the plaintiffs' moving
25 papers and supporting declarations shows that the plaintiffs have
26 no idea what practices Pacific is engaged in regarding the awards
27 program disclosures or otherwise. Nowhere do the plaintiffs
28 indicate the basis for their assertions that Pacific proposes to

1 disclose anything other than the "lump sum" information.

2 E. The Plaintiffs' "Public Interest" Assertions for
3 a TRO are Baseless and Arrogant.

4 The plaintiffs further claim that a TRO is necessary to
5 prevent further harm to consumers, because the awards program
6 advertising materials are misleading. As argued above, there is
7 nothing misleading about the advertising. Further, the
8 disclosure of a consumer's proprietary information only occurs
9 upon release and consent by the customer. As shown, the 1996
10 Telecommunications Act specifically grants to consumers this
11 right of control. If anything, granting the plaintiffs'
12 application for TRO would undermine such control, thereby harming
13 consumers. To say the least, the plaintiffs' paternalistic
14 attitudes toward the rate paying public are misplaced. The
15 customers can decide for themselves whether they want to sign up
16 for Pacific Bell's awards program -- and/or for any of the many
17 promotional awards programs routinely offered by the plaintiffs
18 themselves over the years.

19
20 IV. CONCLUSION

21 Plaintiffs' pursuit of the equitable remedy of a TRO
22 presumes an inadequacy of legal remedies. Ironically, neither a
23 legal nor an equitable remedy is necessary or appropriate. As
24 demonstrated, Pacific is not engaged in any of the wrongful
25 conduct of which plaintiffs are complaining. Pacific is not
26 improperly disclosing the plaintiffs' proprietary information.
27 What Pacific is doing, namely, the disclosure of the lump sum
28 billing amounts, is not violative of either the

1 Telecommunications Act or the billing agreements with the
2 plaintiffs. Therefore, no legal or equitable relief is
3 justified. The plaintiffs' claims are based on speculation, not
4 facts. Their claimed potential injuries, like a house of cards,
5 is built upon this speculation. The lack of a factual basis
6 brings down their claim of damages.

7 For the foregoing reasons, plaintiffs' application for
8 issuance of a temporary restraining order should be denied.

9 DATED: May 10, 1996

10 Respectfully submitted,

11 PACIFIC TELESIS LEGAL GROUP

12
13 By: Bobby C. Lawyer
14 BOBBY C. LAWYER
15 Attorneys for Defendants
16 PACIFIC BELL, PACIFIC TELESIS
17 GROUP, PACIFIC BELL EXTRAS and
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6 PACIFIC BELL EXTRAS and
PACIFIC BELL COMMUNICATIONS
7
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 SPRINT COMMUNICATIONS COMPANY)	CASE NO. C 96-1692 FMS
L.P., a Delaware limited)	
13 partnership,,)	
14 Plaintiff,)	DEFENDANTS PACIFIC BELL, PACIFIC
15 vs.)	TELESIS GROUP, PACIFIC BELL
16 PACIFIC BELL, a California)	EXTRAS, AND PACIFIC BELL
corporation; PACIFIC TELESIS)	COMMUNICATIONS' OPPOSITION TO
17 GROUP, a Nevada corporation;)	SPRINT COMMUNICATIONS COMPANY'S
PACIFIC BELL EXTRAS, a)	APPLICATION FOR A TEMPORARY
18 California corporation;)	<u>RESTRAINING ORDER</u>
PACIFIC BELL COMMUNICATIONS, a)	
19 California corporation,)	DATE: TO BE DETERMINED
20 Defendants.)	TIME: TO BE DETERMINED
	PLACE: JUDGE ARMSTRONG'S
	COURTROOM

21
22
23 Defendants Pacific Bell, Pacific Telesis Group, Pacific
24 Bell Extras and Pacific Bell Communications (collectively
25 hereinafter referred to as "Pacific") have been served with a
26 Notice and Application for Temporary Restraining Order, filed in
27 this Court, by AT&T Communications of California, Inc. and MCI
28 Telecommunications Corporation, Case No. C 96-1691 SBA (The "AT&T

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MAY 10 1996
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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

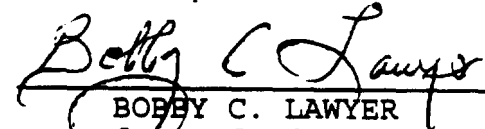
1 Action"). The issues argued and delineated in the Memorandum of
2 Points and Authorities filed in the AT&T Action are substantially
3 identical to those issues argued and delineated in the
4 Application filed in this matter by Sprint Communications
5 Company, as are the terms of the temporary restraining order
6 sought.

7 The AT&T Action and this matter have not been
8 consolidated. However, in the interest of efficiency and
9 judicial economy, Pacific hereby asserts and incorporates herein
10 its Opposition to AT&T's and MCI's Application for a Temporary
11 Restraining Order, and all accompanying Declarations in support
12 thereof.

13 DATED: May 10, 1996.

14 PACIFIC TELESIS LEGAL GROUP

15
16 By:


17 BOBBY C. LAWYER
18 Attorneys for Defendants
19 PACIFIC BELL, PACIFIC TELESIS
20 GROUP, PACIFIC BELL EXTRAS and
21 PACIFIC BELL COMMUNICATIONS
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23
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Attorneys for Defendants
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PACIFIC BELL EXTRAS, and
PACIFIC BELL COMMUNICATIONS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AT&T COMMUNICATIONS OF
CALIFORNIA, INC., a California
corporation, and MCI
TELECOMMUNICATIONS
CORPORATION, a Delaware
corporation,
Plaintiffs,

vs.

PACIFIC BELL, a California
corporation; PACIFIC TELESIS
GROUP, a Nevada corporation;
PACIFIC BELL EXTRAS, a
California corporation; and
PACIFIC BELL COMMUNICATIONS, a
California corporation,
Defendants

CASE NO. C 96-1691 SBA

DECLARATION OF JAN HEWITT IN
SUPPORT OF DEFENDANTS' (PACIFIC
BELL, ET AL.) OPPOSITION TO
ATT'S AND MCI'S APPLICATION FOR
A TEMPORARY RESTRAINING ORDER

DATE: TO BE DETERMINED

TIME: TO BE DETERMINED

PLACE: JUDGE ARMSTRONG'S
COURTROOM

I, Jan Hewitt, declare:

1. I am presently employed by Pacific Bell ("Pacific Bell") and, as such, am on loan to its
affiliate, PB Extras ("PB Extras"). My position there is Project Manager. I submit this

1.

J. Hewitt Decl. Opposition
TRO Application
C 96-1691 SBA

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MAY 10 1996

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(415) 774-2000

1 declaration in support of defendants' (Pacific Bell et al) opposition to AT&T and MCI's
2 (collectively the "Plaintiffs") application for a Temporary Restraining Order. The facts
3 stated herein are true of my personal knowledge, or based on business records kept in the
4 course of regularly conducted business activity at Pacific Bell or PB Extras, respectively,
5 and it is the normal business practice of Pacific Bell or PB Extras, respectively, to make
6 these records. I have personal knowledge of the facts stated in this declaration, except
7 those matters stated on information and belief, and if called, could and would testify
8 competently to them.
9

- 10 2. I came to Pacific Bell in 1985, where I have been for the last eleven years, in various
11 Marketing positions.

12
13 My first position was as an Analyst for the Marketing Intelligence Center, a research and
14 information group supporting market strategy, planning and competitive research groups at
15 Pacific Bell. I was promoted to Manager of the Center and developed specialized database
16 services to provide access to both internal and external information sources relevant to
17 telecommunications.
18

19 My next assignment in 1989 was in the Market Research group, where I worked on a variety of
20 research projects for the Residence telecommunications market.

21 From there I moved to the Consumer Marketing group, where I developed market plans for the
22 residential market.

23
24 My next assignment in 1991 was to launch a loyalty program for residential customers called
25 "California Gold". I managed the program until it was discontinued in January 1996. In 1994
26 I took on the responsibility for the development and launch of the Pacific Bell Savings Card, a
27 Co-branded, combined credit and calling card offered to Pacific Bell residence customers that
28

1 customers that earns them dollars off their Pacific Bell phone bill. In 1995 I took on project
2 management for the new Pacific Bell Awards program launched in March 1996.

- 3 3. In this declaration, I will describe the organization and function of the Pacific Bell Awards
4 ("Awards") program, the program's promotion and enrollment process, the fact that the
5 program does not employ deceptive advertising, and the fact the program is not harmful to the
6 Plaintiffs.
7

8 Pacific Bell Awards: Background

- 9 4. Pacific Bell Awards was launched March 31, 1996 through a television advertisement. The
10 purpose of Awards is to retain Pacific Bell residential customers, to thank them for their
11 loyalty to Pacific Bell, and to provide a vehicle to encourage customers to stay with Pacific
12 Bell in the advent of competitive offerings in the market of local telephone exchange service.
13 Pacific Bell Awards is funded, promoted and administered by Pacific Bell Extras, a wholly-
14 owned subsidiary of Pacific Telesis group.
15
16 5. Any Pacific Bell residential customer is eligible to enroll in the program.
17
18 6. Enrollment is voluntary and at no cost to the customer. Once enrolled, the customer is awarded
19 10 points for every dollar each month his or her total Pacific Bell-rendered telephone bill is
20 \$50.00 or more.
21
22 7. Customers redeem their points to obtain an Awards Certificate reflecting a discount off the
23 price of goods or services offered by a third party program participant ("program
24 participants"). Customers order the Awards Certificate by calling a toll-free 800 number. The
25 Awards Certificates are redeemed directly by the customer (i) physically in person, at the retail
26 location of certain program participants, or (ii) by telephone when ordering goods or services
27 offered by other program participants. To the extent program participants require information
28